

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MINNESOTA

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CLERK, U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

DR. KEITH F. BELL

Plaintiff Pro Se,

v.

SHOW-RITE FEEDS

Defendant

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Case No. 23-cv-3008 (JRT/JFD)

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

Dr. Keith F. Bell ("Plaintiff" or "Dr. Bell") brings this suit against Defendant, Show-Rite Feeds, and alleges as follows:

I. INTRODUCTION

1. This case arises from Show-rite Feeds' flagrant and widespread copyright infringement of Plaintiff's copyrighted works.

2. On September 28, 2020, Plaintiff discovered that on December 11, 2019 Defendant had posted copyrighted material: *Winning Isn't Normal* TX 2 672 644 [Exhibit 1] (herein after referred to as "the Book" and TX 8-503-571 [Exhibit 2] (herein after referred to as "WIN") without authorization.

3. Defendant's posts instantaneously disseminated the Book and WIN to at least 42,702 of Defendant's Followers and displayed WIN to the billions of persons in the world who had access to the Internet. Additionally, at least 242 of Defendant's followers shared (reposted)

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the Book and WIN causing an ongoing downstream cascading effect of unauthorized distributions.

4. Through these actions, Defendant willfully infringed upon at least Dr. Bell's rights to copy, disseminate, and display the Book and WIN.

5. Now Plaintiff brings this lawsuit for copyright infringement and Violation of the Digital Millennium Copyright Act (herein after referred to as "DMCA.")

6. On September 28, 2020 Dr. Bell provided notice to the Defendant in demanding the infringing activities of copying and distribution cease immediately.

7. Dr. Bell believes, and has reason to believe, that the copyrighted material was still being published, distributed, and displayed by defendant in October of 2020.

8. By doing so, Show-Rite Feeds not only infringed upon Dr. Bell's copyright, but willfully engaged in infringing activities by ignoring Dr. Bell's demands to cease the infringing activities of copying, publishing, and distributing the copyrighted materials. Accordingly, Dr. Bell now brings this lawsuit for copyright infringement against Show-rite Feeds.

II. PARTIES

9. Dr. Bell resides in Austin, Texas, and maintains a place of business at 3101 Mistyglen Circle, Austin, Texas 78746.

10. Show-Rite Feeds maintains its principal place of business at 111 West Cherry Street, Suite 500, Mankato, Minnesota 56001

III. JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1332(a), and 1338(a), because these claims are between diverse parties; Dr. Bell seeks damages in excess of \$75,000; and Dr. Bell asserts claims for copyright infringement pursuant to 17 U.S.C. § 101, *et seq.*, and 17 U.S.C. § 1201, *et. seq.*

12. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 28 U.S. Code § 1400 - Patents and copyrights, mask works, and designs:

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

IV. FACTUAL BACKGROUND

13. Dr. Bell is a renowned sports psychologist, author, and former University of Texas swim coach.

14. Dr. Bell is the recipient of the prestigious International Swimming Hall of Fame Buck Dawson Author of the Year Award, receiving this honor 11-times: by far the most of any other recipient¹

15. Dr. Bell authored and owns a valid copyright registration in a popular motivational book titled *Winning Isn't Normal*®² (the "Book"). The U.S. Copyright Office issued the Book's copyright registration on September 21, 1989 (No. TX-0002-6726-44).
[Exhibit 1]

16. Dr. Bell published the Book in 1982 to critical acclaim, wide distribution, and significant publicity.

17. Dr. Bell continues to offer the book for sale through the website:
www.winningisntnormal.com.

¹ <https://www.ishof.org/awards/buck-dawson-authors-award/> (page bottom: > read more)

² Dr. Bell also holds a trademark registration for "Winning Isn't Normal" for printed matter; the trademark registration number is: 4630749

18. Within the Book is a famous excerpt that appears in the INTRODUCTION of the Book, also titled “WINNING ISN’T NORMAL”: “WIN,” which is attached as [Exhibit 3]

19. WIN is the heart of the Book. In fact, the Book was built upon WIN is Plaintiff’s original, creative expression and consists of examples and elaborations of Plaintiff’s philosophy of what Plaintiff believes is the best approach to outperforming the competition in sports and in all other endeavors in which success is desirable. WIN is not factual. Herein after, the Book and Win are referred to as: “the Works.” [Exhibit 4]

20. The success of the Works has increased Dr. Bell’s recognition as an authority in his field and he has been invited to speak at conferences, symposia, and other engagements as a result.

21. Dr. Bell plainly marks and provides notice of his copyrights³. He includes the relevant copyright notices on copies of the Book, and has a conspicuous notice on the purchase page of his Winning Isn’t Normal[®] website. This page provides details regarding how to resolve prior infringements without the need for court intervention:

Copyright Notice

All of Dr. Bell’s books are protected by U.S. & International copyright law as is the text contained in the Winning Isn’t Normal Passage (“WIN”), WIN posters and WIN t-shirts. Use in print, electronic, or any other use of any of this material, in part or whole, is strictly forbidden. Attribution alone is not a substitute for permission to use copyrighted or trademarked works, nor does ownership of a physical copy constitute permission for use. Dr. Bell does not authorize any form of reproduction, posting, distributing, performance, display, or any other use of any of his copyrighted works.

Products may only be purchased at the full prevailing price plus shipping and handling per unit. If you are interested in sharing any of Dr. Bell’s products you must purchase copies for each recipient. If you have already used Dr. Bell’s works without full payment, please contact Dr. Bell to arrange for compensation for your infringements. Thank you for respecting this author and the multitude of hours he spent to produce this work.

22. Dr. Bell offers to sell the Book at reasonable rates to those who wish to buy the Book, which includes WIN.

³ See “Copyright Notice” at: <https://www.winningisntnormal.com>

23. Through Dr. Bell's diligent efforts to identify unauthorized uses of the Works, on September 28, 2020 Dr. Bell discovered that on or about December 11, 2019, a date after the Works were copyrighted and registered; Defendant, without authorization: duplicated, posted, disseminated, and displayed "WIN" on Defendant's social media accounts:

- www.facebook.com/pg/showritefeeds/posts/ [Exhibit 5]
- www.facebook.com/pg/showritefeeds/photos/ [Exhibit 6]
- www.facebook.com/pg/showritefeeds/photos/ [Exhibit 7]
- www.instagram.com/show_rite/ [Exhibit 8]
- www.instagram.com/explore/tags/teamshowrite/ [Exhibit 9]

24. Defendant's posts are devoid of Dr. Bell's name or any other identifying copyright information.

25. Show-rite Feeds engaged in willful copyright infringement and violated the Digital Millennium Copyright Act ("DMCA") by distributing WIN to upwards of Defendant's nearly 42,702 followers [Exhibit 10] and displaying WIN to the billions who had access to the Internet. Plaintiff believes that Defendant's displays do not qualify for any of the exemptions to display.

V. CLAIMS FOR RELIEF

COUNT ONE: INJURY

26. Dr. Bell incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

27. Dr. Bell has been injured by Defendant's unauthorized uses of the Works. These injuries were natural, probable, and foreseeable consequences.

28. Dr. Bell is entitled to his attorneys' fees and costs

COUNT TWO: COPYRIGHT INFRINGEMENT – THE BOOK

29. Dr. Bell incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

30. Dr. Bell indisputably holds a valid copyright in the Book (No. TX-0002-6726-44)
Dr. Bell owns the infringed-upon work. [Exhibit 1]

31. Defendant copied one or more constituent and original elements of the Book. By copying this core protected elements in the Book without authorization, Defendant blatantly infringed upon Dr. Bell's copyrights.

32. Show-Rite Feeds publicly displayed one or more constituent and original elements of the Book. By displaying the core protected elements in the Book without authorization, Defendant blatantly infringed upon Dr. Bell's copyright. These infringements occurred in violation of federal copyright law, with knowledge that Dr. Bell had not authorized the copying, distribution, and display with knowledge that no assignment had been granted by Dr. Bell.

33. Dr. Bell is entitled to injunctive relief and actual damages pursuant to 17 U.S.C. § 504(b)–(c).

34. Dr. Bell is entitled to his attorneys' fees and costs pursuant to 17 U.S.C. § 505.

COUNT THREE: COPYRIGHT INFRINGEMENT—WIN

35. Dr. Bell incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

36. Dr. Bell indisputably holds a valid copyright in WIN (No. TX-8-503-571). Dr. Bell owns the infringed-upon work. [Exhibit 2]

37. Show-Rite Feeds copied one or more constituent and original elements of WIN. By copying these core-protected elements in ~~WIN~~ without authorization, Defendant blatantly infringed upon Dr. Bell's copyright.

38. Defendant also publicly displayed one or more constituent and original elements of WIN. [Exhibits: 5,6,7,8,9]

39. By displaying the core protected elements in WIN without authorization, Defendant blatantly infringed upon Dr. Bell's copyright. Plaintiff believes that Show-rite Feeds' displays do not qualify for any of the exemptions to display.

40. The infringements occurred in violation of federal copyright law, with knowledge that Dr. Bell had not authorized the copying and distribution, and with knowledge that no assignment had been granted by Dr. Bell.

41. Through these unauthorized commercial actions, Defendant infringed Dr. Bell's exclusive rights at least to: (1) reproduce WIN in copies; (2) distribute copies of WIN to the public; and (3) display WIN publicly

42. Dr. Bell is entitled to injunctive relief and actual damages pursuant to 17 U.S.C. § 504(b)–(c).

43. Dr. Bell is entitled to his attorneys' fees and costs pursuant to 17 U.S.C. § 505.

COUNT FOUR: DMCA VIOLATION

44. Dr. Bell incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

45. Defendant's infringing social media copies and displays of the Works from the Book, were stripped of any notice of copyright, the author's name, surrounding literary text, or other information identifying the work or the author of the work.

46. The removed or altered information constitutes copyright management information ("CMI") under 17 U.S.C. § 1202(c).

47. Show-Rite Feeds distributed the Works and/or copies of the Works knowing that CMI had been removed or altered without authority of the copyright owner or the law. Defendant had reasonable grounds to know that the distribution would induce, enable, facilitate, or conceal an infringement of rights under the DMCA.

48. These actions constitute a violation of 17 U.S.C. § 1202(b).

49. Dr. Bell is entitled to injunctive relief and may elect to exercise his entitlement to statutory damages under 17 U.S.C. § 1203(c)(2)–(3).

50. Dr. Bell is entitled to his attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(4)–(5).

VI. CONDITIONS PRECEDENT

51. Dr. Bell fully performed his contractual obligations and all conditions precedent to his claims for relief have been performed, have occurred, or have been excused or waived.

VII. JURY DEMAND

52. Plaintiff demands a trial by jury.

VIII. PRAYER

53. Dr. Bell prays for judgment against Show-Rite Feeds as follows:

- a. Actual damages and Show-Rite Feed's profits associated with the copyright infringements of each work.
- b. Statutory damages based on violations of Section 1202 of the DMCA, of a sum not less than \$2,500 or more than \$25,000 per violation.
- c. Actual damages and Show-Rite Feed's profits associated with the DMCA violations for each day the infringing posts remained up.
- d. An injunction prohibiting Show-Rite Feeds or its agents from:
 - i. Copying, distributing, using, performing, or displaying the Book, WIN, or original elements of the same;
 - ii. Creating any derivative works based on the Book, WIN, or original elements of the same without first obtaining an assignment from Plaintiff allowing such creation; or

- iii. Otherwise engaging in any action to infringe upon Plaintiff's copyrighted works.
- e. Reasonable and necessary attorneys' fees and costs of court;
- f. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- g. Any such other relief at law or in equity to which the Court deems Dr. Bell is justly entitled.

Date: September 26, 2023

Respectfully submitted,

A handwritten signature in cursive script that reads "Keith Bell".

Dr. Keith F. Bell, Pro Se
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